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PATENT
Attorney Docket No. 440490/PALL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:

FENDYA et al.

Application No. 09/890,355

Filed: June 18, 2002

For: SEPARATION DEVICES AND
PROCESSES

Art Unit: 1724

Examiner: M. Savage

**PETITION TO WITHDRAW NOTICE OF ABANDONMENT
PURSUANT TO 37 CFR § 1.181 OR, ALTERNATIVELY,
TO REVIVE THE APPLICATION PURSUANT TO 37 CFR § 1.137(b)**

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Dear Sir:

On September 15, 2005, a Notice of Abandonment (Attachment A) was issued for this application. According to the Notice of Abandonment, no reply was timely filed in response to a July 9, 2004, Office Action (Attachment B). As explained in this petition, the July 9, 2004, Office Action was issued in error and was vacated by the Office of PCT Legal Administration of the United States Patent and Trademark Office. Consequently, no reply to the July 9, 2004, Office Action was required.

Pursuant to 37 CFR 1.181, applicant petitions for withdrawal of the Notice of Abandonment dated September 15, 2005. If any fee is associated with this petition, it is respectfully requested (a) that the fee be waived because the Notice of Abandonment was issued in error on the part of the United States Patent and Trademark Office or (b) that the fee be charged to Deposit Account No. 12-1216. (A duplicate copy of this petition is attached.)

Alternatively, if it is determined that the Notice of Abandonment was properly issued, applicant petitions, pursuant to 37 CFR § 1.137(b), to revive the application because it was unintentionally abandoned. It is respectfully contented that no reply to the July 9, 2004 Office Action is required, and, therefore, no reply accompanies this petition. Even though applicant respectfully contends that no reply was necessary, it is stated that the entire delay in

filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. If the application is revived pursuant to 37 CFR § 1.137(b), it is respectfully requested that the \$1,500 37 CFR § 1.17(m) fee be charged to Deposit Account No. 12-1216.

Statement of Facts Involved

1. On July 9, 2004, an Office Action was mailed to applicant's attorney.
2. Noting that the subject matter described in the Office Action was completely unrelated to the subject matter of the application, applicant's attorney contacted the Examiner who issued the Office Action, i.e., Examiner Aminzay. After several discussions with Examiner Aminzay and her supervisor over many weeks, applicant's attorney was advised to file a petition under 37 CFR § 1.182.
3. On November 18, 2004, a Petition Pursuant to 37 CFR § 1.182 was filed (Attachment C). In the petition, it was explained that a typographical error on the part of the applicant's attorney caused the wrong application to be examined.
4. On December 15, 2004, applicant's attorney received a decision (Attachment D) in response to the November 18, 2004 petition. The decision noted, "it is clear that a typographical error was made," and concluded:
 - 1) that the November 18, 2004, petition is granted;
 - 2) that the July 9, 2004, Office Action was based on the wrong application because it was based on International Application No. PCT/US00/02701 rather than International Application No. PCT/US00/02071; and
 - 3) that the July 9, 2004, Office Action is vacated.

Points to be Considered

1. When the United States Patent and Trademark Office vacated the July 9, 2004, Office Action, the Office Action was without any force or effect retroactively to the mailing date of the Office Action. It is as if the Office Action, which was directed to an entirely different application, were never prepared and mailed. No reply responding to that Office Action was, is, or ever will be required. Because no reply was required, certainly no request and fee for an extension of time for filing the reply were required. Consequently, the Notice of Abandonment should be withdrawn.
2. The November 19, 2004, Petition Pursuant to 37 CFR § 1.182 was not a reply, or "in lieu of" a reply, to the July 9, 2004, Office Action. The petition did not address the merits of the July

9, 2004, Office Action and did not advance the prosecution of the entirely different application on which the Office Action was erroneously based. Rather, the petition was simply a notification that the wrong application had been examined and a request that the Director have the proper application examined. Because the petition was not a reply, or in lieu of a reply, to the July 9, 2004, Office Action, no request and fee for an extension of time were required for filing the petition. Consequently, the Notice of Abandonment should be withdrawn.

3. It is respectfully contended that the application was not abandoned at the time that the November 19, 2004, Petition Pursuant to 37 CFR § 1.182 was filed. However, even if the application had lapsed by November 19, 2004, because no request and fee for an extension of time were filed with the petition, the Director had jurisdiction to consider the § 1.182 petition under his inherent authority in situations not specifically provided for in the regulations. The Director's subsequent decision to vacate the July 9, 2004, Office Action then nullified any and all requirements and effects of the Office Action. Specifically, the Director's decision to vacate the Office Action nullified any abandonment of the application for failure to timely respond to the vacated Office Action. Consequently, the Notice of Abandonment should be withdrawn.

Actions Requested

It is respectfully requested:

- 1) that the November 18, 2004, Petition Pursuant to 37 CFR § 1.182, the decision responding to the petition, and the Notice of Abandonment mailed September 15, 2005, be reviewed and
- 2) that either:
 - i) the Notice of Abandonment be withdrawn or
 - ii) if the Notice of Abandonment is not withdrawn, the application be revived pursuant to 37 CFR § 1.137(b) for being unintentionally abandoned.

Respectfully submitted,



John M. Belz, Reg. No. 30,359
LEYDIG, VOIT & MAYER
700 Thirteenth Street, N.W., Suite 300
Washington, DC 20005-3960
(202) 737-6770 (telephone)
(202) 737-6776 (facsimile)

Date: 18 Oct 2005



PATENT
Attorney Docket No. 440490/PALL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:

FENDYA et al.

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filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. If the application is revived pursuant to 37 CFR § 1.137(b), it is respectfully requested that the \$1,500 37 CFR § 1.17(m) fee be charged to Deposit Account No. 12-1216.

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Actions Requested

It is respectfully requested:

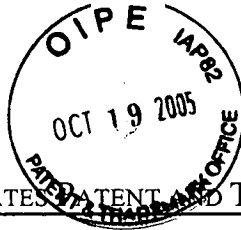
- 1) that the November 18, 2004, Petition Pursuant to 37 CFR § 1.182, the decision responding to the petition, and the Notice of Abandonment mailed September 15, 2005, be reviewed and
- 2) that either:
 - i) the Notice of Abandonment be withdrawn or
 - ii) if the Notice of Abandonment is not withdrawn, the application be revived pursuant to 37 CFR § 1.137(b) for being unintentionally abandoned.

Respectfully submitted,



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Date: 18 Oct 2005

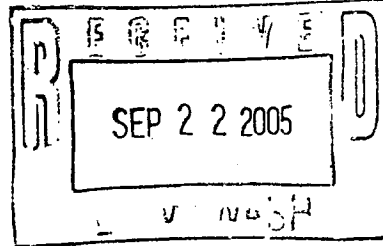


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,355	06/18/2002	Thomas J. Fendya	440490/PALL	1196

23548 7590 09/15/2005
LEYDIG VOIT & MAYER, LTD
700 THIRTEENTH ST. NW
SUITE 300
WASHINGTON, DC 20005-3960



EXAMINER	
SAVAGE, MATTHEW O	
ART UNIT	PAPER NUMBER
1724	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

✓



Notice of Abandonment

Application No.

09/890,355

Examiner

Matthew O. Savage

Applicant(s)

FENDYA ET AL.

Art Unit

1724

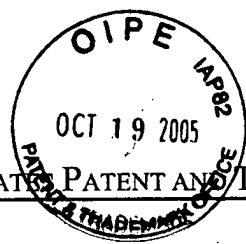
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 09 July 2004.
 - (a) ☒ A reply was received on 18 November 2004 (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on 11 October 2004.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

M. Savage
Matthew O Savage
Primary Examiner
Art Unit: 1724

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,355	03/28/2002	Thomas J. Fendya	440490/PALL	1196

23548 7590 07/09/2004
LEYDIG VOIT & MAYER, LTD
700 THIRTEENTH ST. NW
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WASHINGTON, DC 20005-3960

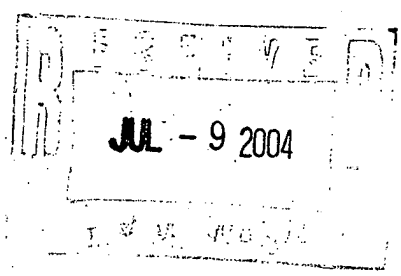
EXAMINER

AMINZAY, SHAIMA Q

ART UNIT	PAPER NUMBER
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2684

DATE MAILED: 07/09/2004



Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKETED



Office Action Summary

Application No.

09/890,355

Applicant(s)

FENDYA ET AL.

Examiner

Shaima Q. Aminzay

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____



DETAILED ACTION

1. This action is responsive to communications: Application Filed: 3/28/2002, Pact: 01/31/2000, US Publication Date: 03/02/1999.
2. Independent Claims 1, 6, and dependent claims 2-5 are pending in the case.
3. The present title of the application is "Range Extension Within a Communication System".

NON-FINAL ACTION

Content of Specification

4. Content of Specification:
 - (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
 - (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
 - (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
 - (d) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

Art Unit: 2684

Or alternatively, Reference to a "Microfiche Appendix": See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.

- (e) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (f) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (g) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (h) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly

complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (i) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (j) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (k) Sequence Listing: See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

Objection

- 5. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
- 6. The applicant's specification copies are not readable, the applicant is required to submit legible copies of the specification. The appropriate corrections are required.

Claim Rejections - 35 USC § 103

◆ The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

◆ Claims 1, and 6 are rejected under 35 U.S.C.103(a) as being unpatentable over Hiramatsu U. S. Patent Number 6212407 B1, and in view of Tokuda et al. U. S. Patent number 6035213.

7. Regarding claims 1, and 6, Hiramatsu teaches a mobile communication system (see for example, Figure 4-8, column 1, lines 9-21), the system comprising: a first receiver (see for example, Figure 7, and column 7, lines 11-14, and lines 38-41, the received circuit (202) receives signals from the first sector via antenna 201 (Figure 4)), and a first despreader having the received signal as an input (see for example, Figure 7, Despreader 203, column 7, line 12, and lines 49-52; the received signals are received in despreader circuit 203 (Figure 7)), and outputting a first despreader signal wherein the first despreader utilizes a spreading code that is delayed with respect to system time (see for example, Figure 7, the first delay circuit 206 and its connection to the despreader 203, and column 7, lines 49-52; and in the first and second delay circuits 206 and 207 "there may be provided a circuit which receives values of delay time sent

from the base station to set the values to the first and second delay circuits 206 and 207" (column 8, lines 30-38, and Figure 6)).

However, Hiramatsu does not teach the systems range extension.

Tokuda teaches the systems range extension (see for example, column 1, line lines 64-67, and column 2, lines 1-15; the communication system's cell range can be extended using the specific time delays and adjusting signal transmission timeslots).

It would have been obvious to one of ordinary skill in the art at the time invention was made to combine Tokuda's mobile communication's cell range extension (see for example, column 1, lines 8-9, and 64-67) with Hiramatsu's mobile communication system with improved interferences (see for example, column 1, lines 9-20, and column 2, lines 55-67) to provide a communication system with extend radio cell simply by using the specific time delays and adjusting signal transmission time-slots (Tokuda, column 1, lines 64-67, and column 2, lines 1-16), and to provide a system that "permits large-size expansion of the radio cells, which leads to a reduction in the total number of fixed base stations in the system. This provides for a reduction in the infrastructure costs" (Tokuda, column 6, lines 43-47), and to provide the "proposed fixed base station allows simple and rapid extension of existing radio cells. This makes it possible to plan for a very flexible radio network" (Tokuda, column 6, lines 50-52).

8. Regarding claims 2, and 5, Hiramatsu and Tokuda teach claim 1, and further Hiramatsu teaches the second receiver (see for example, column 7, lines 43-45,

the first receiver and the second receiver limitations are described in Figure 7, and column 7, Figures 3-6, column 7, lines 10-67 continued to column 8, lines 1-34, and further, see for example Figure 4, first sector antenna 101, Figure 5, first received/transmit signal, and Figure 4, second sector antenna 102, and Figure 5, second receive/transmit signal).


9. Regarding claims 3, 4, 7, and 8, Hiramatsu and Tokuda teach claim 2, and further Hiramatsu teaches the time period and signal transmission (see for example Figure 6, and column 6, lines 65-67 continued to column 7, lines 1-9, and lines 44-45).
10. Regarding claim 9, and 10, Hiramatsu and Tokuda teach claim 6, and further Tokuda teaches maximum transmission time (see for example column 2, lines 1-16).

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 form.

Inquiry

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shaima Q. Aminzay whose telephone number is 703-305-8723. The examiner can normally be reached on 7:00 AM -5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 703-308-7745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 2600's customer service telephone number is 703-305-3900.


Shaima Q. Aminzay
(Examiner)


NAY MAUNG
SUPERVISORY PATENT EXAMINER

Nay Maung
(SPE)

Art Unit 2684

June 27, 2004

**Notice of References Cited**

Application/Control No.

09/890,355

Applicant(s)/Patent Under
Reexamination
FENDYA ET AL.

Examiner

Shaima Q. Aminzay

Art Unit

2684

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,212,407 B1 ✓	04-2001	Hiramatsu, Katsuhiko	455/562.1
	B	US-5,544,171 A ✓	08-1996	Godecker, Reinhold	370/337
	C	US-6,363,261 B1 ✓	03-2002	Raghavan, Ramabadrans S.	455/561
	D	US-6,622,020 B1 ✓	09-2003	Seki, Syuichi	455/434
	E	US-6,304,759 B1 ✓	10-2001	Jiang et al.	455/502
	F	US-6,088,592 A ✓	07-2000	Doner et al.	455/447
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



PATENT
Attorney Docket No. 440490

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:

FENDYA et al.

Application No. 09/890,355

Filed: March 28, 2002

Art Unit: 2684

Examiner: Aminzay, S.

PETITION PURSUANT TO 37 CFR 1.182

Commissioner for Patents
U.S. Patent and Trademark Office
220 20th Street S. Customer Window, Mail Stop PCT
Attention: PCT Legal
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Dear Sir:

The above-referenced patent application is the §371 National Phase application of International Application No. PCT/US00/02071. However, the application which has been placed in the file and examined by the U.S. Patent and Trademark Office is International Application No. PCT/US00/02701. Applicants, through their attorney, petition, pursuant to 37 CFR 1.182, for the application corresponding to International Application No. PCT/US00/02071 to be placed in the file and for examination of the correct application.

The Transmittal Letter submitted to the United States Designated/Elected Office Concerning a Filing under 35 USC 371 on July 30, 2001, which was an express request to begin national examination procedures for International Application No. PCT/US00/02071, incorrectly identified the International Application No. as PCT/US00/02701. The International Search Report, International Preliminary Examination Report, Application Data Sheet, and Postcard submitted with the Transmittal Letter, each correctly referred to PCT/US00/02071 and the correct specification, claims and drawings for International Application No. PCT/US00/02071 were also submitted. A Combined Declaration and Power of Attorney submitted in response to the Notification of Missing Requirements also correctly identified the International Application. On or about May 7, 2002, more than two years prior to receiving the first Official Action, Applicants representative discovered the error and contacted the U.S. Patent and Trademark Office employee, Patricia Booker, believed to have most recently handled the case (a Notice of Acceptance of Application signed by Ms. Booker having been received on April 26, 2002). Pursuant to Ms. Booker's instructions, a corrected transmittal letter was sent via facsimile to Ms.

In re Appln. of FENDYA et al.
Application No. 09/890,355

Booker's attention on May 7, 2002. No further correspondence was received from the U.S. Patent and Trademark Office until an Official Action was received on July 9, 2004, containing a detailed action on the wrong application.

As proof of the foregoing facts, attached are copies of the originally submitted Application Data Sheet, International Search Report, International Preliminary Examination Report, the specification, claims, and drawings, date stamped postcard, the Combined Declaration and Power of Attorney, and the corrected transmittal letter and associated facsimile cover sheet.

Petitioners request that the correct documents be placed in the file and that the patent application be forwarded to the appropriate technology center for examination.

The fee of \$130, in effect at the time of filing of this Petition, required pursuant to 37 CFR 17(h) should be charged to Deposit Account No. 12-1216. A duplicate copy of this Petition is attached.

Respectfully submitted,

Shannon Schemel

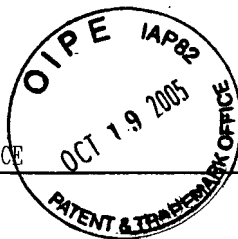
Shannon Schemel, Reg. No. 47,926
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Date: November 17, 2004
SDS :



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In re Application of
FENDYA, Thomas J. *et al*
U.S. Application No.: 09/890,355
PCT No.: PCT/US00/02071
Int. Filing Date: 31 January 2000
Priority Date: 29 January 1999
Attorney's Docket No.: 440490
For: SEPARATION DEVICES AND
PROCESSES

440490
DEC 15 2004

**DECISION ON
PETITION
UNDER 37 CFR 1.182**

This decision is in response to applicants' "Petition Pursuant to 37 CFR 1.182" ("Pet.") filed on 18 November 2004.

BACKGROUND

On 30 July 2001, applicants filed for entry into the national stage in the United States under 35 U.S.C. 371. Applicants listed the international application number as PCT/US00/02701 on the transmittal letter (Form PTO-1390).

On 28 December 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee must be provided.

On 28 March 2002, applicants filed a "Response to Notification of Missing Requirements" which was accompanied by, *inter alia*, a one-month extension and \$110.00 extension fee, the \$130.00 surcharge fee and a declaration executed by four joint inventors. The declaration listed the international application as PCT/US00/02071, not PCT/US00/02701.

On 23 April 2002, the DO/EO/US mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903) advising applicants that the 35 U.S.C. 371 requirements were satisfied for the national stage of PCT/US00/02701 on 28 March 2002.

On 18 June 2002, applicant filed a "Letter" which was accompanied by a declaration listing all five joint inventors for PCT/US00/02071. This declaration was in compliance with 37 CFR 1.497(a) and (b).

On 18 November 2004, applicants filed the instant petition under 37 CFR 1.182.

DISCUSSION

Petitioners claim that on entering the national stage on 30 July 2001 for PCT/US00/02071, applicants "incorrectly identified the International Application No. as PCT/US00/02701." Pet. at ¶ 2. Accordingly, petitioners request "for the application corresponding to International Application No. PCT/US00/02071 to be placed in the file and for examination of the correct application." *Id.* at ¶ 1.

A review of the above-captioned application file revealed that the wrong international application number, *i.e.*, PCT/US00/02701, was designated on the transmittal letter filed with the national stage papers on 30 July 2001. The title, name, and priority date claimed on the transmittal letter corresponded to PCT/US00/02071, not PCT/US00/02701. Applicants also submitted an Application Data Sheet referencing PCT/US00/02071 filed 31 January 2000 and U.S. application No. 60/114,972 filed 29 January 1999 under "Foreign Application Information" with the national stage papers.

Applicants submitted an executed declaration referencing PCT/US00/02071 on 28 March 2002. The DO/EO/US mailed a Form PCT/DO/EO/903 and filing receipt on 23 April 2002 indicating an international application number for the above-captioned application of PCT/US00/02701.

A check of PCT/US00/02071 shows that it has the same title, inventors, priority date and international filing date as listed on the transmittal letter, Application Data Sheet and declaration. Thus, it is clear that a typographical error was made on the transmittal letter. Applicants submitted authorization to charge the required petition fee of \$130.00 to Deposit Account No. 12-1216 with the instant petition.

Applicants have met all the requirements of a grantable petition.

CONCLUSION

For the reasons listed above, applicants' petition under 37 CFR 1.182 to correct the PCT application number is **GRANTED**.

The above-captioned application is a national stage of **PCT/US00/2071**.

The Notification of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903) mailed 23 April 2002 recorded the wrong international application number and priority date for the international application. Hence, it is hereby **VACATED**.

The Office Action mailed 09 July 2004 was based on PCT/US00/02701 and is also **VACATED**.

The declaration filed 28 March 2002 recorded only four joint inventors for PCT/US00/02071. Marc Samson was not listed as a joint inventor. The declaration filed 18 June 2002 lists all five joint inventors and is in compliance with 37 CFR 1.497(a) and (b).

This application is being forwarded to the DO/EO/US to mail a Notification of Acceptance of Application Under 35 U.S.C. 371 indicating an international filing date of 31 January 2000, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of **18 June 2002**, and then mailing a corrected filing receipt.

The application will then be forwarded to Technology Center 2600 for further processing and examination.



James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302